

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

	X	
THE NEW YORK TIMES COMPANY,	:	
and ERIC LIPTON,	:	
	:	
Plaintiffs,	:	
	:	
- against -	:	<u>COMPLAINT</u>
	:	
UNITED STATES DEPARTMENT OF STATE,	:	
	:	
Defendant.	:	
	:	
	X	

Plaintiffs THE NEW YORK TIMES COMPANY and ERIC LIPTON, by their undersigned attorney, allege for their Complaint:

1. This is an action under the Freedom of Information Act, 5 U.S.C. § 552 (“FOIA”), to obtain an order for the production of agency records from the United States Department of State (“DOS”) in response to a request properly made by Plaintiffs.

PARTIES

2. Plaintiff The New York Times Company publishes *The New York Times* newspaper and www.nytimes.com. The New York Times Company is headquartered in this judicial district at 620 Eighth Avenue, New York, New York.

3. Plaintiff Eric Lipton is a reporter for *The New York Times* newspaper and an employee of The New York Times Company.

4. Defendant DOS is an agency of the federal government that has possession and control of the records that Plaintiffs seek.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 552(a)(4)(B).

6. Venue is premised on the place of business of Plaintiffs and is proper in this district under 5 U.S.C. § 552(a)(4)(B).

7. Plaintiffs have exhausted all administrative remedies available in regard to the request at issue. *See* U.S.C. § 552(a)(6)(C).

FACTS

8. On November 15, 2017, Mr. Lipton submitted a FOIA request (the “Request”) to DOS (F-2017-17100), requesting “any ethics complaints filed by staff related to Transportation Secretary Chao’s scheduled trip to China” in the period between January 20, 2017, and November 15, 2017.

9. On November 17, 2017, DOS stated in an email to Mr. Lipton that “[s]ome or all of the records you seek appear to have been originated by another agency,” namely, the Department of Transportation. Mr. Lipton replied that same day, stating “[w]e have made a request there as well.” Later that day, DOS emailed Mr. Lipton again, seeking confirmation that he wished to proceed with the Request.

10. On February 5, 2018, Mr. Lipton emailed DOS to confirm his interest in the Request and inquire about the status of the search.

11. On February 7, 2018, DOS replied to Mr. Lipton’s email. It stated that the Request “continues to be processed,” and that the delay was caused by “a backlog of approximately 10,600 cases.”

12. Between September and November 2018, counsel for Plaintiffs repeatedly inquired with DOS by phone and email about the status of the Request. Counsel's inquiries were either unanswered or met by the response that the Request continued to be processed.

13. On December 19, 2018, DOS emailed Mr. Lipton to inform him that the Request "is in process" and had an "estimated date of completion" of April 2019.

14. To date, DOS has not made a determination regarding the Request.

COUNT I

15. Plaintiffs repeat, reallege, and reincorporate the allegations in the foregoing paragraphs as though fully set forth herein.

16. DOS is an agency subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession at the time of the request and provide a lawful reason for withholding any other materials as to which it is claiming an exemption.

17. Plaintiffs have exhausted all administrative remedies under FOIA, because DOS has failed to act on the Request within 20 business days. *See* 5 U.S.C. § 552(a)(6)(A), (C).

18. Accordingly, Plaintiffs are entitled to an order compelling DOS to produce records responsive to the Request.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

19. Declare that the documents sought by the Request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

20. Order DOS to provide the requested records to Plaintiffs within 20 business days of the Court's order;

21. Award Plaintiffs the costs of this proceeding, including reasonable attorney's fees, as expressly permitted by FOIA; and

22. Grant Plaintiffs such other and further relief as this Court deems just and proper.

Dated: New York, New York
January 23, 2019

_____/s/_____
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